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June 6, 1997

Richard Lee Harvey
WTUC
1018 Hillcrest Drive
Neshanic Station, New Jersey
08853

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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Dear Sir:

Attached please find two copies of an ex parte letter that is being sent to The Office of the Chairman - The Honorable Reed Hundt in the non-restricted/Permit-But-Disclose Notice of Proposed Rulemaking MM Docket 96-120.

Sincerely,


Richard Lee Harvey

2 enclosures

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Office of The Chairman -The Honorable Reed Hundt
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Dear Sir:

I hold the construction permit for un-built WTUC(FM) which is assigned to Tuckerton, NJ. WTUC would be the first local radio service to the Tuckerton area. For about three years, I have been seeking zoning approval for the required tower without much success. The transmitter site is restricted to a very small area, .04 sq. miles or about 25 acres, due to New Jersey State environmental regulations and current FCC rules. In the Notice of Proposed Rule Making ("NPRM") MM Docket 96-120, the Commission is currently considering changing some of its' rules that, if extended, could positively affect the situation for WTUC.

I have been told by Commission staff that a decision on the docket is near and that a draft decision is circulating at this time. The Docket proposes to eliminate second adjacent spacing requirements for grandfathered stations that were grandfathered in 1964. WTUC, a 3000 watt Class A station, was grandfathered when the rules were changed in 1989. I am asking the Commission to extend the proposed rules changes to this additional class of grandfathered station. With this change, WTUC could locate on any of several existing towers.

The current rules have caused considerable resources to be expended by ourselves and by local government because of outdated technical considerations built into the FCC rules. Seven evenings of local zoning hearings have been conducted and a lengthy court appeals process have resulted. In the near future, I will need to commit to another expensive and drawn out process to relocate a New Jersey State owned tower. This will move the tower less than two miles along the Garden State Parkway in order to get it within the area that is allowable under the current rules. This would be unnecessary if

Ex Parte Letter on Non-Restricted/Permit-But-Disclose Proceeding MM Docket 96-120
"Grandfathered Short-Spaced FM Stations"

Two copies have been submitted to the Office of the Secretary

Docket 96-120 were to apply to WTUC. Since this process involves other parties, once committed it will not be possible to reverse the decision without substantial disruption to all parties involved. The Commission could help considerably by reaching a decision on Docket 96-120.

WTUC's Situation

WTUC as a 3000 watt grandfathered Class A FM station, is regulated under transmitter spacing requirements in section 73.213 of the Commission's rules. It can also take advantage of section 73.215 that allows some flexibility as to transmitter location if a directional antenna is used. Unfortunately, section 73.215, the section that provides site flexibility, requires 29 kilometers to second and third adjacent class A stations, whereas the original requirement was only 27. As a result, section 73.215 fails to provide WTUC with any additional flexibility in locating its transmitter site towards other class A stations. Before the creation of section 73.215, the Commission would allow waivers of the its' spacing requirements.

Using the FCC transmitter spacing requirements, the allowable area in which the transmitter site can be located is limited to about a 3.9 sq. mile area.. About 3.5 sq. miles of this area are located within the New Jersey State Pinelands protected area. This area is an environmentally sensitive area and, although the land is privately owned, almost all development is prohibited. Towers are not permitted and there is no provision for any waivers. Most of the remaining area, only about .4 sq. mile, is part of a New Jersey State park. The remaining allowable area is very small, only .04 sq. mile, and all contained in one community, Bass River Township. WTUC is forced to locate its' tower in this very limited area.

Bass River Township is a rural community and has zoned this area as a forest zone which allows low density homes and some recreational uses compatible with the use of the forest. Local officials have opposed WTUC's efforts to obtain permission to erect its tower. We lost in the zoning process in August, 1995 and we also recently lost a court appeal. The judge wrote:

In this case, such a high tower, lighted at night, would obviously be a terrible eyesore in the sweeping landscape of the pinelands, and a intrusion of high tech commercialism in the trackless wilderness of scrubby pines, fresh ponds and rivers and endangered fauna, that makes up a goodly portion of Burlington County. To keep it that way has been decided at all levels of government, State, County and Township. In short, the Court cannot think of a more inappropriate use than this...

Just because a distant federal agency for largely technical reasons focuses attention on a tiny spot of land it deems suitable for a broadcast antenna is no reason to conclude under state zoning and environmental

policy, a township characterized by extensive pinelands should bear the burden it imposes or the detriment it foists on the public.

Docket 96-120

This docket, among other things, proposes to eliminate the second and third adjacent spacing requirements for stations that were grandfathered by FCC rule changes that occurred in 1964. WTUC has filed comments asking that the Commission extend this to an additional class of station, the Class A FM stations that were grandfathered by FCC rule changes that occurred in 1989. If this extension was enacted into the FCC rules, WTUC could locate its' transmitter site on any of several nearby existing radio towers.

There appears to be good evidence that the technical basis for requiring the physical separation of stations operating with second or third adjacent frequencies is no longer true. Many years ago FM radio receivers drifted (were not frequency stable) and the need to keep second and third adjacent stations a distance apart was necessary to keep the receivers from switching channels. With improved frequency stability and improved selectivity, FM radio receivers for many years now have not exhibited this sort of problem.

Another potential form of second and third adjacent interference occurs when the interfering signal is much stronger than the desired signal. This occurs when the listener is located near the transmitter site of the interfering station. The current rules actually increases the potential of this sort of interference. In the current flexibility rules, stations which moves closer to a second or third adjacent frequency stations must reduce power in the direction of the interfering station. This reduces the intended signal relative to the interfering signal in the area nearby the interfering transmitter site and therefore increases the interference potential. This is called the "signal to interference ratio" and is the method used to design frequency reuse systems such as cellular telephone systems. Stations should be allowed to maintain full power when they move closer together. The area of potential interference is also less when the transmitters are located nearer each other.

The Northeast has many short spaced FM stations that do not meet current spacing requirements. These were authorized many years ago when the Commission's rules did not account for second or third adjacent channel spacing for some stations. An example from central New Jersey is the WMGQ-WRKS-WAWZ situation. WMGQ and WAWZ are in New Jersey; WRKS is in New York City. The frequencies are 98.3 / 98.7 / 99.1 which makes WRKS the second adjacent to both WAWZ and WMGQ. Both WRKS and WAWZ are class B and WMGQ is class A. The following shows the short spacing:

	Actual	Full Space Requirement (73.207)	Short
WRKS to WMGQ	53 km.	69 km.	16 km.
WRKS to WAWZ	52 km.	74 km.	22 km.

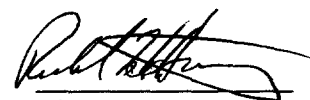
Recently, I drove in and around the WMGQ transmitter site listening to WRKS on my 1987 automotive original equipment radio to test these concepts. Except for a small area on the edge of the WMGQ property, I did not experience any interference. I also tested using a portable radio(My First Sony-a child's radio); the interference area was about the same as the blanketing interference area. In the blanketing area the portable radio had problems on many channels - not just WRKS. Even so, many times I could improve reception by repositioning the whip antenna or repositioning the radio. My conclusion from these tests is that there is no reason to consider second and third adjacent interference separate from nor different from blanketing interference. The Commission in the NPRM states that it has not received any complaints specific to these situations.

Other Considerations

Another consideration is the difficult zoning circumstances that the rapid deployment of PCS and Cellular services has caused. For broadcasters, the widespread, in some cases organized, opposition to radio towers is troublesome, particularly in light of the fact that broadcasters use towers that are generally taller than and power levels greater than PCS or Cellular. In addition, many major market FM broadcasters may soon need to relocate their transmitting sites due to the lack of capacity on existing towers for the additional transmitting antennas for the new advanced television service. These stations may find their situation similar to WTUC's when they attempt to build new tower sites and find themselves locked in by FCC spacing requirements and local zoning restrictions.

The current FCC rules have caused considerable resources to be expended by ourselves and by local government officials because of outdated technical considerations. The subject NPRM could, if extended, offer needed relief to a potentially large number of broadcasters without compromising the technical basis used for locating FM radio transmitting sites. I encourage the Commission to address this issue now in this NPRM and to implement its' provisions as soon as possible. If you wish to discuss this material further or have any questions, I can be reach during at (908)369-4817 or by e-mail at rh@juno.com. Thank you for your consideration in this matter.

Sincerely,



Richard Lee Harvey